



**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[FRL-9973-51-OAR]**

**RIN 2060-AM75**

**Issuance of Guidance Memorandum, “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Issuance and withdrawal of guidance memorandums.

**SUMMARY:** The Environmental Protection Agency (EPA) is notifying the public that it has issued the guidance memorandum titled “Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act”. The EPA is also withdrawing the memorandum titled “Potential to Emit for MACT Standards – Guidance on Timing Issues.”

**DATES:** Effective on **[insert date of publication in the Federal Register]**.

**ADDRESSES:** You may view this guidance memorandum electronically at:

*<https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Elineth Torres or Ms. Debra Dalcher, Policy and Strategies Group, Sector Policies and Programs Division (D205-02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number: (919) 541-4347 or (919) 541-2443, respectively; and email address: *[torres.elineth@epa.gov](mailto:torres.elineth@epa.gov)* or *[dalcher.debra@epa.gov](mailto:dalcher.debra@epa.gov)*, respectively.

**SUPPLEMENTARY INFORMATION:** On January 25, 2018, the EPA issued a guidance memorandum that addresses the question of when a major source subject to a maximum achievable control technology (MACT) standard under CAA section 112 may be reclassified as an area source, and thereby avoid being subject thereafter to major source MACT and other requirements applicable to major sources under CAA section 112. As is explained in the memorandum, the plain language of the definitions of “major source” in CAA section 112(a)(1) and of “area source” in CAA section 112(a)(2) compels the conclusion that a major source becomes an area source at such time that the source takes an enforceable limit on its potential to emit (PTE) hazardous air pollutants (HAP) below the major source thresholds (*i.e.*, 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP). In such circumstances, a source that was previously classified as major, and which so limits its PTE, will no longer be subject either to the major source MACT or other major source requirements that were applicable to it as a major source under CAA section 112.

A prior EPA guidance memorandum had taken a different position. *See* Potential to Emit for MACT Standards – Guidance on Timing Issues.” John Seitz, Director, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, (May 16, 1995) (the “May 1995 Seitz Memorandum”). The May 1995 Seitz Memorandum set forth a policy, commonly known as “once in, always in” (the “OIAI policy”), under which “facilities may switch to area source status at any time until the ‘first compliance date’ of the standard,” with “first compliance date” being defined to mean the “first date a source must comply with an emission limitation or other substantive regulatory requirement.” May 1995 Seitz Memorandum at 5. Thereafter, under the OIAI policy, “facilities that are major sources for HAP on the ‘first compliance date’ are required to comply permanently with the MACT standard.” *Id.* at 9.

The guidance signed on January 25, 2018, supersedes that which was contained in the May 1995 Seitz Memorandum.

The EPA anticipates that it will soon publish a **Federal Register** document to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute as discussed in this memorandum.

Dated: January 25, 2018.

Panagiotis E. Tsigotis, Director,  
Office of Air Quality Planning and Standards.

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